

§ 287.2

part, except as otherwise provided, have the same meaning as in the Internal Revenue Code and the regulations thereunder.

§ 287.2 Scope of section 511 of the Act and the regulations in this part.

(a) *Applicability of regulations.* The regulations prescribed in this part—

(1) Apply to gain realized from the sale or loss of vessels, earnings from the operation of vessels, and interest (or otherwise) with respect to amounts previously deposited in the construction reserve fund, for a taxable year beginning after December 31, 1964, and

(2) Apply to the expenditure, obligation, or withdrawal, during a taxable year beginning after December 31, 1964, of any deposits of gain, earnings, and interest (or otherwise) of the character referred to in paragraph (a)(1) of this section without regard to the taxable year in which the deposits were made.

(b) *Nonrecognition and accumulation.* Section 511 of the Act provides, under conditions specified, for the nonrecognition, for income and excess-profits tax purposes, of the gain realized from the sale or indemnification for loss of certain vessels including certain vessels in the course of construction, or shares therein. It also permits the accumulation of the proceeds of such sales or indemnification and of certain earnings without liability under part I (section 531 and following), subchapter G, chapter 1 of the Internal Revenue Code of 1954, and the regulations thereunder (26 CFR 1.531 through 1.537-1 (Income Tax Regulations)).

(c) *Availability of benefits.* The benefits of section 511 of the Act are available to any citizen as defined in paragraph (a)(4) of § 287.1, who, during any taxable year owns, in whole or in part, a vessel or vessels within the scope of § 287.3. A citizen operating such a vessel or vessels owned by any other person or persons can derive no benefit from the provisions relating to the nonrecognition of gain from the sale or loss of such vessel or vessels so owned, but may establish a construction reserve fund in which he may deposit earnings from the operation of such vessel or vessels.

(d) *Applicability of section 511.* Section 511 of the Act applies only with respect

46 CFR Ch. II (10-1-12 Edition)

to sales or losses of vessels within the scope of § 287.3 or in respect of earnings derived from the operation of such vessels. A loss to be within section 511 of the Act must be an actual or constructive total loss. Whether there is a total loss, actual or constructive, will be determined by the Administration.

§ 287.3 Requirements as to vessel operations.

Section 511 of the Act applies with respect to vessels operated in the foreign or domestic commerce of the United States or in the fisheries of the United States and vessels acquired or being constructed for the purpose of such operation. The foreign commerce of the United States includes commerce or trade between the United States (including the District of Columbia), the territories and possessions which are embraced within the coastwise laws, and a foreign country or other territories and possessions of the United States. The domestic commerce of the United States includes commerce or trade between ports of the United States and its territories and possessions, embraced within the coastwise laws and on inland rivers. The fisheries include the fisheries of the United States and its territories and possessions. Section 511 of the Act does not apply to vessels operated in the foreign commerce or fisheries of any country other than the United States.

§ 287.4 Application to establish fund.

(a) Any person claiming to be entitled to the benefits of section 511 of the Act may make application, in writing, to the Administration for permission to establish a construction reserve fund. The original application shall be executed and verified by the taxpayer, or if the taxpayer is a corporation, by one of its principal officers, in triplicate, and shall be accompanied by eight conformed copies when filed with the Administration. MARAD will accept electronic options (such as facsimile and Internet) for transmission of required information to MARAD, if practicable.

(b) Form of application:

Maritime Administration, DOT

§ 287.4

APPLICATION FOR PERMISSION TO ESTABLISH A CONSTRUCTION RESERVE FUND UNDER SEC. 511, MERCHANT MARINE ACT, 1936, AS AMENDED

The undersigned applicant, _____, hereby applies, under section 511, Merchant Marine Act, 1936, as amended, and the regulations prescribed by the Secretary of Transportation acting by and through the Maritime Administrator (hereinafter referred to as "Administrator") (46 CFR Part 287) and the Secretary of the Treasury, Internal Revenue Service (26 CFR Part 2) for permission to establish a construction reserve fund to be used for the construction or acquisition of a new vessel or vessels as defined by subsection (a) of said section 511, and submits in support of its application the following information:

A. Identity and nationality of applicant.

1. Exact name.
2. Status (individual, partnership, corporation, etc.).
3. Give the place of incorporation—whether under the laws of the United States, or of a State, Territory, District, or possession thereof.
4. Address of principal executive offices.
5. A statement, if applicant is an individual or a partnership, should be attached in the application in affidavit form, containing information that applicant is a citizen of the United States by virtue of birth in the United States, naturalization, etc.; give place and date of birth and/or naturalization; if derivative U.S. citizenship is alleged through naturalization of parent while a minor, the number, date and place of issue of the certificate of derivative citizenship of applicant should be cited together with any other pertinent details relative thereto.
6. (a) The name, office, and nationality of each officer and director of the applicant owning shares of stock in the corporation should be submitted together with the number and class of capital shares owned.
(b) In order that the U.S. citizenship status of a corporation applicant may be determined by the Administration, an affidavit as in accordance with Part 355 of this Chapter shall be furnished together with a current copy of the Articles or Certificate of Incorporation certified by the Secretary of the State where incorporated (or appropriate officer, if other than a State, as provided in "A.3" above), and a copy of the current By-Laws certified by the Secretary of the Corporation.
7. The name, address and nationality of, and number and class of capital shares owned by, each person not named in answer to Item 6, owning of record, or beneficially if known, 5 percent or more of the outstanding capital shares of any class of the applicant. (The applicant shall be required, upon request, to furnish such additional data as may

be deemed necessary to establish the U.S. citizenship of the applicant pursuant to section 2, Shipping Act, 1916, or section 905(c), Merchant Marine Act, 1936, as amended.)

8. A brief statement of the general effect of each voting agreement, voting trust, or other arrangement whereby the voting rights in any shares of the applicant are owned, controlled or exercised, or whereby the control of the applicant is in any way held or exercised by any person not the holder of legal title to such shares. Give the name, address, nationality, and business of any such person, and, if not an individual, the form of organization.

B. Business of the applicant and proposed use of the new vessel.

9. A brief description of (a) the shipping business, or (b) the fishing business, and (c) any other business activities of the applicant.

10. If engaged in the domestic or foreign commerce of the United States, full details concerning the services, routes, or lines on which vessels owned or chartered by the applicant are or have been operated.

11. If applicant is engaged in the fisheries of the United States, full details concerning the location of the fishing operations and the method employed.

C. Proceeds to be deposited.

12. If applicant proposes to deposit the proceeds from the sale of a vessel, a description of the transaction from which the funds were obtained, including the name of the vessel sold, name of purchaser, selling price, date and terms of sale, consideration received by the applicant, amount and description of any mortgage or other lien on the vessel at the time of sale, whether such mortgage or lien was satisfied from the proceeds of sale, brief description of vessel as to size, speed, tonnage, etc., age of vessel at the time of sale, and value and accrued depreciation for income tax purposes at time of sale.

13. If applicant proposes to deposit proceeds of indemnity from loss of a vessel, the name of the vessel, date and description of the loss, amount of indemnity and date received, name of underwriter, amount and description of any mortgage or other lien on the vessel at time of loss, whether such mortgage or lien was satisfied from the proceeds of the indemnity, age of vessel at time of loss, brief description of vessel as to size, speed, tonnage, etc., and value and accrued depreciation for income tax purposes at time of loss.

14. If applicant proposes to deposit earnings from the operation of vessels, a statement of the amount of such earnings to be deposited, the period during which earned, and their source, including the vessels, services, routes, or lines involved.

D. The new vessel.

§ 287.4

46 CFR Ch. II (10-1-12 Edition)

15. Statement whether applicant proposes: (a) To have a new vessel built to specifications, or (b) to acquire a vessel already constructed or under construction. If the former, and a contract for construction has been entered into at the time of the making of this application, state the date said contract was entered into, the parties thereto, the terms thereof, and date of delivery thereunder. If the latter, give name of vessel, builder, from whom purchased, or to be purchased, date when construction commenced, and date when delivered, or if vessel is still under construction, anticipated date of delivery.

16. The general characteristics of the proposed new vessel, including (a) principal dimensions; (b) gross, net and deadweight tonnage; (c) bale and grain capacities of all cargo holds; (d) capacities of all tanks, storage spaces, refrigerator cargo spaces and separately chilled cargo spaces; (e) number and classes of passenger accommodations; (f) type and power, and in case of steam machinery, the gauge pressure, total temperature, and vacuum expected of propulsive machinery; (g) kind of fuel to be burned; and (h) sustained sea speed at designed load draft.

17. If the proposed new vessel is to operate in the domestic or foreign commerce of the United States, a statement of how it will meet the needs of the service, route or line for which it is intended, with emphasis on the following factors: (a) Cargo accommodations—cargo space and fittings and appliances for handling and stowing cargo; (b) passenger accommodations; (c) construction and design; and (d) accommodations for officers and crews.

18. If the proposed new vessel is to be operated in the fisheries of the United States, a description of the vessel, and a statement of how the vessel will meet the needs of such operations.

19. If the proposed new vessel is intended to replace a vessel or vessels requisitioned or purchased by the United States, a statement of how the proposed replacement vessel will meet the needs of the service, route, line, or use for which it is intended.

20. If the proposed new vessel is less than 2,000 gross tons or of less speed than 12 knots, a description of the features which would make it desirable for use by the United States in case of war or national emergency.

E. The construction reserve fund.

21. A description of the deposit or deposits which the applicant proposes to make in the construction reserve fund, including the amounts to be deposited in cash, notes, mortgages or other evidences of indebtedness, irrevocable commitments, or securities, giving reference to the source as described in items C-12, C-13, or C-14.

22. Name and address of proposed depository or depositories for the construction reserve fund.

F. Taxable year of applicant.

23. Whether applicant files its Federal income tax return on a calendar year or fiscal year basis and if on the latter, the beginning of its fiscal year.

G. Exhibits to be furnished.

24. The following documents shall be filed as exhibits attached to the application:

Exhibit I—If available at the time this application is filed, an authenticated copy of any irrevocable commitment to finance the construction or acquisition of the new vessel proposed to be deposited in the construction reserve fund pursuant to the provisions of 46 CFR 287.13(d).

Exhibit II—If the applicant is a corporation, a copy of each contract or agreement presently in effect, referred to in answer to Item 8.

H. Covenants of the applicant.

25. The applicant hereby agrees as follows:

(a) That the construction reserve fund shall be subject to the provisions of section 511, Merchant Marine Act, 1936, as amended, to the regulations prescribed by the Administrator, and the Secretary of the Treasury with respect to the establishment, maintenance, expenditure, and use of such fund, and to such resolutions as may be adopted by the Administrator with respect to such fund;

(b) That it will furnish copies of any contracts entered into for the construction or acquisition of new vessels which the Administrator may require;

(c) That it will furnish hull plans and specifications, machinery plans and specifications, and data with respect to communication facilities if and to the extent required by the Administrator; and

(d) If no contract for the construction of a new vessel as set forth in paragraph D, subdivision 15(a) hereof, has been entered into at the time of making of this application, it will, upon entering into said contract, furnish to the Administrator the date thereof, the parties thereto, the terms thereof and date of delivery thereunder. Name of applicant:

(Date) _____
By _____ (Name, typed)

(Title)

(Signature)

I, _____, certify that I am the _____ (Title of office) of _____ (Exact name of applicant) the applicant on whose behalf I am authorized to execute the foregoing application and agreements; that the applicant is a citizen of the United States, in accordance with the requirements of the Merchant Marine Act,

Maritime Administration, DOT

§ 287.6

1936, as amended; that this application is made for the purpose of inducing the Secretary of Transportation, represented by the Maritime Administrator to grant to the applicant, pursuant to the provisions of section 511 of the Merchant Marine Act, 1936, as amended, and the regulations promulgated by the Secretary of the Treasury and the Maritime Administrator thereunder, with all of which I am familiar, permission to establish a construction reserve fund; that I have carefully examined the application and all documents submitted in connection therewith and, to the best of my knowledge, information and belief, the statements and representations contained in said application and related documents are full, complete, accurate, and true.

Date:

(Name)

(Title)

(Signature)

Attention: A false statement in this application is punishable by law (18 U.S.C. 1001).

INSTRUCTIONS AS TO PREPARATION OF APPLICATION

1. Applications shall be prepared in the form provided according to the lettered items and serially numbered paragraphs. They must be signed and sworn to as provided. Eleven copies of the applications shall be filed with the Maritime Administrator, at least one copy of which shall be signed.

2. Each application shall be complete. Items or part of items which are inapplicable may, however, be omitted. The information required by Article 25 need be furnished only as stated in that item. The applicant may incorporate by specific reference information previously furnished the Maritime Administrator provided that such information so incorporated shall have been furnished at least in triplicate.

3. If any information called for by an applicable item is not furnished, and explanation of the omission shall be given. The applicant may furnish such relevant information as it may desire, in addition to that specified in the form.

4. Any additional information called for by the Maritime Administrator from time to time shall be furnished as an amendment or amendments to the application. The original and 11 copies of each amendment shall be filed, shall refer to the application, and shall be identified as an amendment and dated. Without any specific request from the Maritime Administrator the applicant shall file from time to time as amendments any information necessary to keep the information contained therein or furnished in connection

therewith current and correct while the application is pending.

(c) *Fee.* Each such application shall be accompanied by the sum of \$225, which sum will be retained to recover the cost of processing the application.

(Approved by the Office of Management and Budget under control number 2133-0032)

[G.O. 38, 2d Rev., 30 FR 7215, May 29, 1965, as amended by Amdt. 1, 31 FR 3397, Mar. 4, 1966; 47 FR 25530, June 14, 1982; 68 FR 62537, Nov. 5, 2003; 69 FR 61451, Oct. 19, 2004]

§ 287.5 Tentative authorization to establish fund.

Where the time between the receipt by the Administration of the application for permission to establish a construction reserve fund and the date prior to which an amount received from the sale or loss of a vessel must be deposited to come within the scope of section 511 of the Act is insufficient to permit a determination of the eligibility of the applicant, the Administration may tentatively authorize the establishment of a construction reserve fund and the deposit of such amount therein. Such tentative authorization shall be subject to rescission by the Administration if subsequently it is determined that the applicant is not entitled to the benefits of section 511 of the Act, or has not complied with the statutory requirements. For example, a tentative authorization will be rescinded if the Administration ascertains that the applicant is not a citizen. Upon such determination, the fund shall be closed and all amounts on deposit therein shall be withdrawn.

§ 287.6 Establishment of fund.

(a) *Authorization by the Administration.* If the application is approved by the Administration, the Administration will adopt Orders authorizing the establishment of a construction reserve fund with the depository or depositories designated by the taxpayer and approved by the Administration. The Orders will provide for joint control by the Administration and the taxpayer over such fund, will set forth the conditions governing the establishment and maintenance of the fund and the making of deposits therein and withdrawals